

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

KAREN COX,

Plaintiff,

vs.

Case No. 05-CV-694-FHM

MICHAEL J. ASTRUE,
Commissioner,
Social Security Administration,

Defendant.

ORDER

Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act (EAJA) [Dkt. 20] is before the Court for decision. Defendant argues that the motion should be denied because it was not timely filed. Plaintiff did not file a reply brief to address the timeliness issue.

As prevailing party, Plaintiff had 90 days from the entry of the judgment in this case in which to file her EAJA fee application. The event that triggers the running of the time clock for a timely EAJA fee application is the district court's remand order. Under EAJA, the prevailing party must apply for fees "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). The judgment becomes final when the 60 days in which to appeal the judgment has expired. *Goatcher v. Chater*, 57 F.3d 980, 981 (10th Cir. 1995)

On December 19, 2006, the Court entered an order remanding the case to the commissioner [Dkt. 18] a judgment was issued [Dkt. 19] the same day. Plaintiff had 90 days from the entry date of the December 19, 2006, remand order in which to file her application for EAJA fees. The 90-day time frame expired on Saturday, March 31, 2007. Therefore Plaintiff's EAJA fee application was due on or before Monday April 2, 2007. The

instant application was filed 66 days later, on June 7, 2007. Plaintiff has offered no justification, or excuse for the late filing of her application for fees.

The EAJA is a partial waiver of sovereign immunity in that it renders the United States liable for attorney's fees for which it would not otherwise be liable. That waiver must be strictly construed in favor of the United States. *Ardestani v. INS*, 502 U.S. 129, 137, 112 S.Ct. 515, 520, 116 L.Ed.2d 496 (1991).

Based on the foregoing, Plaintiff's Motion for Attorney Fees Pursuant to the Equal Access to Justice Act (EAJA) [Dkt. 20] is DENIED as untimely.

SO ORDERED this 30th day of July, 2007.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE